-14 RP

MONTANA LEGISLATIVE HISTORY

Chapter 121 19 2003

Bill H 212 S _____ Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
1/17 ✓	___C	3/10 ✓	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 1/21 ✓	C	3/12 ✓	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

4/10	FREE CONFERENCE COMMITTEE REPORT RECEIVED		
4/12	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED ON VOICE VOTE	49	0
4/14	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	50	0
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	68	30
4/24	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	72	28
4/24	SENT TO ENROLLING		
4/25	RETURNED FROM ENROLLING		
4/26	SIGNED BY PRESIDENT		
4/26	SIGNED BY SPEAKER		
4/26	TRANSMITTED TO GOVERNOR		
5/05	SIGNED BY GOVERNOR		
5/05	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 559		
	EFFECTIVE DATE: 5/05/2003 - SECTIONS 15 AND 17		
	EFFECTIVE DATE: 7/01/2003 - SECTIONS 1-14 AND 16		

HB 212 INTRODUCED BY SHOCKLEY *LC0107 DRAFTER: PETESCH*

ELIMINATE UNANIMOUS JURY VERDICT FOR PUNITIVE DAMAGES

BY REQUEST OF LAW AND JUSTICE INTERIM COMMITTEE

12/27	INTRODUCED		
1/03	REFERRED TO JUDICIARY		
1/17	HEARING		
1/21	COMMITTEE EXECUTIVE ACTION—BILL PASSED	18	0
1/22	COMMITTEE REPORT—BILL PASSED		
1/25	2ND READING PASSED	99	1
1/27	3RD READING PASSED	98	1
	TRANSMITTED TO SENATE		
1/29	REFERRED TO JUDICIARY		
3/10	HEARING		
3/12	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	8	0
3/12	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED ON VOICE VOTE	47	2
3/14	3RD READING CONCURRED	42	7
	RETURNED TO HOUSE		
3/14	SENT TO ENROLLING		
3/17	RETURNED FROM ENROLLING		
3/17	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/18	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR		
3/26	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 121		
	EFFECTIVE DATE: 3/25/2003 - ALL SECTIONS		

HB 213 INTRODUCED BY GALLIK *LC0273 DRAFTER: HEFFELFINGER*

HOUSEKEEPING BILL FOR RETIREMENT SYSTEMS ADMINISTERED BY MPERA

BY REQUEST OF PUBLIC EMPLOYEES' RETIREMENT BOARD

12/27	INTRODUCED		
1/03	REFERRED TO STATE ADMINISTRATION		
1/22	HEARING		
1/28	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	19	0
1/29	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/01	2ND READING PASSED	99	0
2/03	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
2/04	REFERRED TO STATE ADMINISTRATION		
2/07	HEARING		
4/01	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	5	0
4/01	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED ON VOICE VOTE	49	0
4/05	3RD READING CONCURRED	45	4
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING SENATE AMENDMENTS CONCURRED	97	1
4/09	3RD READING PASSED AS AMENDED BY SENATE	96	3
4/09	SENT TO ENROLLING		
	RETURNED FROM ENROLLING		

HOUSE BILL NO. 212

INTRODUCED BY J. SHOCKLEY

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT THAT AN AWARD OF PUNITIVE DAMAGES MUST BE UNANIMOUS AS TO LIABILITY AND AMOUNT; AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, in Finstad v. W.R. Grace & Co., 2000 MT 228, 301 Mont. 240, 8 P.3d 778 (2000), the Montana Supreme Court held that the portion of section 27-1-221(6), MCA, which requires that an award of punitive damages must be unanimous as to liability and amount, violates Article II, section 26, of the Montana Constitution, guaranteeing a verdict by a two-thirds majority in all civil cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-221, MCA, is amended to read:

"27-1-221. Punitive damages -- liability -- proof -- award. (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if the defendant:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2,

do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less than beyond a reasonable doubt.

(6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury. ~~An award of punitive damages must be unanimous as to liability and amount.~~

(7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing,

decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 17, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)

Members Excused: Rep. Bill Thomas (R)
Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: 208, 1/8/2003; 209,1/8/2003; 210, 1/8/2003; 211, 1/8/03; 212, 1/8/03

Executive Action: HB 52; HB 208; HB 54; HB 156

HEARING ON HB 212

Sponsor: **REP. JIM SHOCKLEY, HD 61, Victor**

Opening Statement by Sponsor:

REP. SHOCKLEY opened on HB 212, stating that he is carrying this bill on behalf of the Law and Justice Interim Committee. The bill would eliminate the requirement that an award of punitive damages must be unanimous as to liability and amount. He stated 27-1-221 would be changed to reflect the Montana Supreme Court case, Finstad v. W.R. Grace & Co. He explained that Finstad held that the portion of section 221 requiring that punitive damages must be unanimous as to liability and amount violates Article II, section 26 of the Montana Constitution. He stated that portion of the Constitution guarantees a verdict by a two-thirds majority in all civil cases.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 28}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. RICE asked Greg Petesch to walk the committee through the steps if they change this law. He stated that to keep the statute as it is would require amending the Montana Constitution.

{Tape: 1; Side: A; Approx. Time Counter: 29 - 61}

Closing by Sponsor:

REP. SHOCKLEY closed on HB 212.

{Tape: 1; Side: A; Approx. Time Counter: 62 - 63}

HEARING ON HB 208

Sponsor: **REP. JIM SHOCKLEY, HD 61, Victor**

Opening Statement by Sponsor:

REP. SHOCKLEY opened on HB 208, stating that this bill would clarify the termination of parental rights without requiring a

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 21, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 222, 1/3/2003; HB 234, 1/3/2003; HB 214, 1/3/2003;
Executive Action: HB 171; HB 197; HB 210; HB 212; HB 209

Vote: **Motion HB 171 BE AMENDED carried 16-1 with PARKER voting no.**

Motion/Vote: **REP. GUTSCHE** moved to **RECONSIDER AMENDMENTS TO HB 171. Motion failed 7-10 with REPS. FACEY, GUTSCHE, LANGE, NEWMAN, PARKER, RASER, and SHOCKLEY voting aye.**

Motion/Vote: **REP. LASZLOFFY** moved that **HB 171 DO PASS AS AMENDED. Motion carried unanimously** roll call vote.

EXECUTIVE ACTION ON HB 197

Motion: **REP. LASZLOFFY** moved that **HB 197 DO PASS.**

Discussion:

John MacMaster explained the amendments on page 5, line 26. He stated the Department of Justice added new language. He also emphasized a conflict between this bill and the .08 BAC bill before the Senate. He stated these bills need to be coordinated.

Motion/Vote: **REP. NOENNIG** moved that **HB 197 BE AMENDED. Motion carried unanimously** by voice vote.

Motion/Vote: **REP. NOENNIG** moved that **HB 197 DO PASS AS AMENDED. Motion carried unanimously** by voice vote.

EXECUTIVE ACTION ON HB 210

Motion: **REP. SHOCKLEY** moved that **HB 210 DO PASS.**

Motion/Vote: **REP. GUTSCHE** moved that **HB 210 BE AMENDED. Motion carried unanimously by voice vote.**

Motion/Vote: **REP. LASZLOFFY** moved that **HB 210 DO PASS AS AMENDED. Motion carried unanimously** by voice vote.

EXECUTIVE ACTION ON HB 212

Motion: **REP. SHOCKLEY** moved that **HB 212 DO PASS.**

Discussion:

REP. SHOCKLEY stated this bill would attempt to make the statutes conform to case law.

Vote: Motion that **HB 212 DO PASS carried unanimously.**

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 10, 2003 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 210, HB 212, HB 214, 2/25/2003
Executive Action: HB 156, HB 210, HB 161

plea. For clarification purposes, he suggested the same reference be made on page 1. **REP. SHOCKLEY** agreed to the clarification as long as the concept of the 90 day time frame was preserved. Also, following the ruling of the JP, there would be ten days to appeal to the district court.

SEN. JERRY O'NEIL questioned whether, under this bill, the defendant would be provided an attorney. **REP. SHOCKLEY** explained if there was a chance of incarceration at the lower court level, the defendant would have the right to an attorney.

Closing by Sponsor:

REP. SHOCKLEY closed on HB 210.

HEARING ON HB 212

Sponsor: **REP. JIM SHOCKLEY, HD 61, VICTOR**

Proponents: **None**

Opponents: **None**

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, introduced HB 212. He explained that in a previous legislative session legislation passed which indicated a super majority was necessary for a punitive damage award. The Supreme Court held that to be unconstitutional and this bill would change the language back to its original form.

Proponents' Testimony: **None**

Opponents' Testimony: **None**

Questions from Committee Members and Responses:

SEN. MCGEE asked the basis for the Court's determination that the legislation was unconstitutional in regard to a super majority. **REP. SHOCKLEY** maintained the Court believed the Constitution requires that in the case of a civil matter a majority, not a super majority, would prevail. If the Legislature wanted to change this language to a super majority, it would be necessary to amend the Constitution.

SEN. MCGEE pointed out that sometimes courts are wrong. The establishment of a policy is the purview of the Legislature, not the Court. He raised a concern about legislation being written

to change the law to conform to a court decision. **REP. SHOCKLEY** noted that, in his opinion, the Court has made an error. Under the current system, their error is the law. It is a disservice to everyone not to be able to read the statutes and realize current law. If an attorney tried to get a super majority in this instance, the judge would deny it based upon a court decision. This could be contested, if the statutes were not changed.

SEN. MCGEE pointed out Article II, Section 20, of the Constitution stated that in all civil actions two-thirds of the jury may render a verdict and a verdict so rendered shall have the same force and effect as if all had concurred therein. He questioned whether the award of punitive damages was dependent on a two-thirds majority vote. **REP. SHOCKLEY** noted that a two-thirds vote would carry the day on any issue except punitive damages. The Supreme Court held because the Constitution states two-thirds, this could not be unanimous. In his earlier testimony he used the term "super majority" but he should have used the term "unanimous".

SEN. GARY PERRY asked what the federal law was in regard to punitive damages. **REP. SHOCKLEY** was not aware of the federal law. He does not practice law in this area.

Closing by Sponsor:

REP. SHOCKLEY closed on HB 212.

HEARING ON HB 214

Sponsor: **REP. JIM SHOCKLEY, HD 61, VICTOR**

Proponents: **Al Smith, Montana Trial Lawyers Association**

Opponents: **Greg Van Horssen, State Farm Insurance Company**
Jon Metropoulos, Farmers Insurance Company and the National Association of Independent Insurers

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, introduced HB 214. He explained the bill would cause the statutes to conform to a Supreme Court Opinion. In the case of Crissafulli v. Bass, the Court adopted the standard in the Restatement of Torts, 2d (sp) in regard to parental liability. Montana has not adopted a standard of parental liability. The Restatement is a learned treatise and contains the majority and minority rule on any issue. In a concurring opinion, Justice Rice suggested the word

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 12, 2003 at 8:07 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	HB 350, 3/5/2003; HB 478, 3/5/2003; HB 402, 3/5/2003; HB 480, 3/5/2003
Executive Action:	HB 40; HB 212; HB 214; HB 66; HB 402; HB 170; HB 171; HB 211

feels section 402 may provided some technical reasons for a person to be released.

Motion: **SEN. CURTISS** moved **HB 40 BE INDEFINITELY POSTPONED.**

Discussion:

SEN. PERRY suggested that moving subsection (4) of Section 402 into Section 401 would preserve existing law.

CHAIRMAN GRIMES wondered if this bill would need to be addressed in a subcommittee.

Vote: The motion of **SEN. CURTISS** that **HB 40 BE INDEFINITELY POSTPONED** carried with 7-1 with **SEN. O'NEIL voting no** and **SEN. JEFF MANGAN not voting.**

CHAIRMAN GRIMES appointed **SENS. CROMLEY, McGEE,** and **O'NEIL** to a subcommittee to work on HB 40. **SEN. McGEE** will chair the subcommittee.

EXECUTIVE ACTION ON HB 212

Motion/Vote: **SEN. PERRY** moved **HB 212 BE CONCURRED IN.** The motion carried **UNANIMOUSLY.** **SEN. WHEAT** will carry HB 212 on the Senate floor.

EXECUTIVE ACTION ON HB 214

Motion: **SEN. O'NEIL** moved **HB 214 BE INDEFINITELY POSTPONED.**

Discussion:

CHAIRMAN GRIMES explained that by killing HB 214, the current court case of Crisafulli v. Bass, which applies the *Restatement (Second) of Torts,* would basically make this very same wording effective law.

SEN. O'NEIL stated the court will look to case law and it will not be iron-clad law since case law changes within varying circumstances. **SEN. O'NEIL** feels this situation needs to allow discretion in considering unique circumstances in each individual case.

CHAIRMAN GRIMES felt the Legislature has a responsibility to weigh in on the issue and exercise some control.

(Tape : 1; Side : B)